

MONTANA BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS

301 South Park, Room 430

P. O. Box 200513

Helena, Montana 59620-0513

PHONE: (406) 841-2387 FAX: (406) 841-2309

E-MAIL: dlibsdp@mt.gov

WEBSITE: www.privatesecurity.mt.gov

APPLICATION PROCEDURES TO TAKE PROCESS SERVER EXAM

The Board of Private Security Patrol Officers and Investigators does not license process servers. Anyone interested in performing this service needs to request from the Board office a Handbook for Process Servers and an application to take the examination.

Upon completion of the process server examination application and payment of the \$20.00 required fee to take the examination, the Board office will send the examination to the local Montana Job Service Center requested by the applicant, or the applicant may choose to take the examination at the Board office in Helena. A \$20.00 examination fee is also required for any retakes.

Upon successful passage of the examination, the individual will be given/mailed a letter by the Board office certifying the individual passed the examination. It is the exam applicant's responsibility to refer to the Handbook for Process Servers to determine the process they must follow to report to their local district clerk of court office and register accordingly.

MONTANA BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS**301 South Park, Room 430****P. O. Box 200513****Helena, Montana 59620-0513****(406) 841-2387 FAX (406) 841-2309****EMAIL: dlibsdp@mt.gov****WEB SITE: <http://www.privatesecurity.mt.gov>****Application to take Exam for :** ☐ **Process Server**1. FULL NAME _____
Last First Middle

2. OTHER NAME(S) KNOWN BY _____

3. BUSINESS NAME (if have one): _____

4. BUSINESS ADDRESS _____
Street or PO Box # City and State Zip Country5. HOME ADDRESS _____
Street or PO Box # City and State Zip Country6. TELEPHONE: () () ()
Business Home Fax

7. SOCIAL SECURITY NUMBER _____ FOREIGN ID NUMBER _____

8. DATE OF BIRTH _____ PLACE OF BIRTH _____
City/State ☐ MALE ☐ FEMALE9. ADDRESS OF LOCAL JOB SERVICE TO TAKE EXAM, IF APPLICABLE.

_____10. Have you ever been convicted of a felony? ☐ Yes ☐ No11. Have you been a resident of the State of Montana for one year? ☐ Yes ☐ No**ATTENTION: PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BEFORE SIGNING THIS FORM.**

I hereby declare under penalty of perjury the information included in my application to be true and complete to the best of my knowledge. In signing this application, I am aware that a false statement to any question may lead to denial of my application for certification as a registered process server.

Legal Signature of Applicant_____
Dated

Subscribed and sworn to by me this _____ day of _____, _____ at _____

City/State_____
Notary Public

SEAL

For the State of

My commission expires _____, _____

HANDBOOK FOR PROCESS SERVERS

HANDBOOK FOR PROCESS SERVERS

WHAT ARE THE REQUIREMENTS AND QUALIFICATIONS FOR A REGISTERED PROCESS SERVER OR LEVYING OFFICER?	3
WHAT IS PROCESS?	6
WHY IS THE SERVICE OF PROCESS NECESSARY?	6
HOW IS SERVICE OF PROCESS ACCOMPLISHED?	6
WHO DELIVERS THE PAPERS TO THE PROCESS SERVER? CAN A PROCESS SERVER REFUSE TO DELIVER PROCESS?	15
WHO PAYS FOR THE COSTS INCURRED IN SERVING PROCESS?	16
WHO SERVES PROCESS WHEN THE SHERIFF IS A PARTY TO AN ACTION?	16
HOW IS THE COURT INFORMED THAT PROCESS HAS BEEN SERVED?	16
THE LEVYING OFFICER	17
WHAT IS LEVY?	17
WHAT IS A WRIT OF EXECUTION?	17
AGAINST WHOM MAY A WRIT OF EXECUTION BE EXECUTED?	18
TO WHOM IS A WRIT OF EXECUTION ISSUED?	20
HOW IS A WRIT OF EXECUTION EXECUTED?	21
WHO PAYS FOR THE COSTS INCURRED IN AN EXECUTION?	22
HOW IS THE COURT INFORMED AN EXECUTION HAS OCCURRED?	22
WHAT PROPERTY IS SUBJECT TO EXECUTION?	22
WHAT OCCURS IF PERSONAL PROPERTY LEVIED UPON IS CLAIMED BY A THIRD PARTY?	23
WHAT OCCURS IF PERSONAL PROPERTY LEVIED UPON IS SUBJECT TO A SECURITY INTEREST?	23
WHAT PROPERTY IS EXEMPT FROM EXECUTION?	23
IS PROPERTY TRACEABLE TO EXEMPT PROPERTY EXEMPT?	26
HOW IS PROPERTY SOLD AFTER IT HAS BEEN LEVIED UPON?	27

HANDBOOK FOR PROCESS SERVERS

In 1987 the Montana legislature enacted legislation creating the occupation of registered process server and levying officer. The purpose of this pamphlet is to acquaint the applicant with the legal requirements of that legislation and the duties and responsibilities of process servers and levying officers. These duties and responsibilities are demanding and complex. This pamphlet is not a definitive text. It is an introduction. The law affecting process servers and levying officers is constantly changing and a registered process server must be vigilant to stay current in the area. Nor does this pamphlet contain any legal interpretations of the statutes cited. Anyone considering conducting the business of a process server and particularly a levying officer should consult with private counsel to determine the legal rights and responsibilities of a levying officer.

This pamphlet is not intended to offer practical suggestions for accomplishing service of process or levying pursuant to writs of execution. However, clear, detailed and exact instructions from the person requesting the service or levy are essential. These instructions are generally included in a document called a "praecipe" (praecipe originally meant a request to the clerk of court to take some action; however, now it has generalized to include a request for process servers or levying officers to take some action). It does not appear that a praecipe is required. A registered process server is required to receive any summons or other process at the point where directed to the process server and to serve the same; if not, the process server is guilty of a misdemeanor and upon conviction thereof must be fined in any sum not exceeding \$100. Mont. Code Ann. § 25-3-201 (3).

This pamphlet cannot address deficiencies in the legislation creating the position of levying officer. For example, § 25-23-402 gives levying officers the power to sell property which has been levied upon, however the statutes do not provide a method by which a registered process server sells the property levied upon. A sheriff has a very specific method, called a Sheriff's Sale, for selling property levied upon. Mont. Code Ann. § 25-13-701-714. The sheriff's sale provisions have not been amended and there is no statute which requires the sheriff to sell property levied on by a levying officer.

Scope: The legislation appears to affect only the service of process issued by the district court and writs of execution issued by the district court.

Requirements, Qualification and Provisions for a Process Server or Levying Officer

What are the requirements and qualifications for a registered process server or levying officer?

25-1-1101. Registered process server -- levying officer. (1) Any person who makes more than 10 services of process, as defined in [25-3-101](#), within this state during 1 calendar year shall file a verified certificate of registration as a process

server with the clerk of the district court of the county in which he resides or has his principal place of business.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13. History: En. Sec. 1, Ch. 548, L. 1987.

25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state. History: En. Sec. 2, Ch. 548, L. 1987.

25-1-1103. Fee -- duration of certificate. (1) A certificate of registration as a process server must be accompanied by a fee of \$100 at the time the certificate is filed. The fee must be deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate and a new registration fee must accompany the new certificate. History: En. Sec. 3, Ch. 548, L. 1987.

25-1-1104. Handbook for process servers. (1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrol officers and investigators provided for in [2-15-1891](#).

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination

provided for in this section. History: En. Sec. 4, Ch. 548, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

25-1-1105. List of process servers -- identification. (1) The clerk of the district court shall maintain a list of all process servers registered in the county. The clerk of the district court shall assign a number to each registered process server. Upon renewal of a certificate of registration, the same number may be assigned.

(2) During the course of serving process or acting as a levying officer, a registered process server must have in his possession an identification card with the number assigned under subsection (1) and a photograph of the registered process server. The clerk of the district court shall furnish the identification card, the cost of which must be reimbursed by the process server. History: En. Sec. 5, Ch. 548, L. 1987.

25-1-1106. Revocation or suspension of certificate. (1) A certificate of registration of a registered process server may be revoked or suspended by the county attorney of the county of registration whenever the registrant makes a service of process not complying with the law.

(2) The county attorney may conduct an investigation concerning the revocation or suspension of a certificate based on the complaint of a person alleging injury caused by improper service of process by the registrant.

(3) The county attorney shall notify the clerk of the district court when a certificate of registration is suspended, revoked, or reinstated. History: En. Sec. 8, Ch. 548, L. 1987.

25-1-1107. Proof of service -- requirements. A proof of service of process signed by a registered process server must indicate the county in which he is registered and the number assigned to him under [25-1-1105](#). History: En. Sec. 9, Ch. 548, L. 1987.

25-1-1111. Bond required. (1) The clerk of the district court may not accept a certificate of registration as a process server unless the certificate is accompanied by a surety bond of \$10,000 per individual or \$100,000 per firm, conditioned upon compliance with this part and all laws governing service of process in this state.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond. History: En. Sec. 6, Ch. 548, L. 1987.

25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under [25-1-1111](#).

(2) If there has been recovery against a registered process server's bond, the registrant must file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney must revoke the registrant's certificate. History: En. Sec. 7, Ch. 548, L. 1987.

What is Process?

Process includes all writs, warrants, summonses, and orders of courts of justice or judicial officers. Mont. Code Ann. § 25-3-101(1).

Why is the service of process necessary?

To give notice of judicial actions to all involved parties and to establish a court's jurisdiction over a person.

How is service of process accomplished?

The service of process in the district court is governed primarily by Rules 4 and 5 of the Montana Rules of Civil Procedure. Rules 4C and 4D of the Montana Rules of Civil Procedure read as follows:

Rule 4C. Process. (1) Summons -- issuance. Upon or after filing the complaint, the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall present a summons to the clerk for issuance. If the summons is in proper form, the clerk shall issue it and deliver it to the plaintiff or to the plaintiff's attorney who shall thereafter deliver it for service upon the defendant in the manner prescribed by these rules. Issuance and service of the summons shall be accomplished within the times prescribed by Rule 4E of these rules. Upon request, the clerk shall issue separate or additional summons against any parties designated in the original action, or against any additional parties who may be brought into the action, which separate or additional summons shall also be served in the manner and within the times prescribed by these rules. The party requesting issuance of the summons shall bear the burden of having it properly issued and served and filed with the clerk.

(2) Summons -- form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in ... County, Montana, and described as follows: (Here insert descriptions of land.)." For exceptions to this form of summons see 4D(4) "Other service," set forth hereinafter. History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct.

Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Jan. 7, 1997, eff. Feb. 14, 1997; amd. Sup. Ct. Ord. Sept. 28, 1999, eff. Jan. 1, 2000.

Rule 4D. Service. (1) By whom served. (a) Service of all process shall be made in the county where the party to be served is found by a sheriff, deputy sheriff, constable, or any other person over the age of 18 not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual other than a minor or an incompetent person or upon a domestic or foreign corporation or partnership or other unincorporated association by mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing the summons and complaint, service of such summons and complaint shall be made by one of the persons mentioned in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and Rule 4D(3).

(ii) Unless good cause is shown for not doing so, the court shall order the payment of costs of the personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(iii) The notice and acknowledgment of receipt of summons and complaint shall be signed and dated. Service of summons and complaint will be deemed complete on the date of signature of the defendant as shown on the acknowledgment.

(2) Personal service within the state. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to the minor personally, and by leaving a copy thereof at the minor's dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to the minor's guardian, if the minor has one within the state, and if not, then to the minor's father or mother or other person or agency having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon that party. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, limited liability company, partnership or other unincorporated association, or upon a foreign corporation, limited liability company, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, manager, member of a member-managed limited liability company, superintendent or managing or general agent, or partner, or associate for such corporation, limited liability company, partnership, or association; or by leaving such copies at the office or place of business of the corporation, limited liability company, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation or limited liability company named on the records of the secretary of state, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, limited liability company, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, limited liability company, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation or limited liability company whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation or limited liability company and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation or limited liability company organized under the laws of this state, or

against a corporation or limited liability company organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation or limited liability company organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation or limited liability company has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of \$5 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in the secretary of state's absence from the secretary of state's office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation or limited liability company was originally incorporated, if known; and the secretary of state shall make a return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation or limited liability company, and the said secretary of state, or a deputy when the secretary is absent from the secretary of state's office, is hereby appointed agent of such corporation or limited liability company for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation or limited liability company regardless of the receipt of any return receipt or advice of refusal of the

addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within 60 days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation or limited liability company, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the attorney general and to any other party which may be prescribed by statute.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal service outside the state. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of [33-1-603](#), [33-1-613](#), [33-1-614](#),

[33-2-314](#), [33-2-315](#), [70-28-207](#), [70-28-208](#), [70-28-209](#), and [70-28-212](#), Montana Code Annotated, when the action pertains to the provisions of such sections.

(5) Service by publication -- when permitted -- effect -- manner -- proof. (a)

When permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for dissolution or for a declaration of invalidity of a marriage of a resident of this state or for modification of a decree of dissolution granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication; and order for publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals defendant's person to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that the affiant has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to

plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that the affiant has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of the court.

(d) Number of publications. Service of the summons by publication may be made by publishing the same three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing summons and complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time when first publication or service outside state must be made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When service by publication or outside state complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional information to be published. In addition to the form of summons prescribed above in "C. Process, (2) Summons--form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the

publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on secretary of state. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or the party's attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of court in which such claim for relief is pending the sum of \$10 to be paid to the secretary of state as a fee for each address of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or a deputy to the party to be served at that party's last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or a deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or a deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon the secretary of state by the clerk of court, including the day, and hour of such service; (2) the fact of mailing a copy of the summons and complaint and notice to the defendant, including the day and

hour thereof, except in those cases where the secretary of state is relieved from doing so under the provisions of D(2)(f) in which cases the affidavit shall so recite; and (3) the fact of receipt of a return from the postal department including the date, and hour thereof, and attaching to the affidavit a copy of such return. The secretary of state, or a deputy, shall then transmit the original summons, and original affidavit along with copy of the notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in the secretary of state's office a copy of the summons, a copy of the affidavit served on the secretary of state by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, the sheriff's or other officer's certificate thereof;

(b) If by any other person, that person's affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the date and place of service.

(e) If service is made under Rule 4D(1)(b) above, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure where only part of defendants are served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause that defendant to appear in said court to show cause why that defendant should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered. History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984; amd. Sup. Ct. Ord. May 1, 1990, eff. May 1, 1990; amd. Sup. Ct. Ord. Mar. 26, 1993; amd. Sup. Ct. Ord. June 24, 1999, eff. Aug. 15, 1999.

These rules cover the common types of service of process. Chapter 3 of title 25 of the Montana Code Annotated contains additional requirements and procedures for delivery of papers, service, and time and manner of the return of service.

Who delivers the papers to the process server? Can a process server refuse to deliver process?

25-3-201. Delivery of papers to officer. (1) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such court or his agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it is the duty of the sheriff, registered process server, or other officer to whom said papers may be directed to receive the same at the place where the same are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If any sheriff, registered process server, or other officer refuses to receive any summons or other process at the point where directed to him or to serve the same, he is guilty of a misdemeanor and upon conviction thereof must be fined in

any sum not exceeding \$100. History: (1), (3)En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (2)En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; R.C.M. 1947, 25-226(part), 93-3016(part); amd. Sec. 83, Ch. 575, L. 1981; amd. Sec. 10, Ch. 548, L. 1987.

25-3-202. When officer's execution of process justified and required. A sheriff, registered process server, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued. History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R.C.M. 1921; Cal. Pol. C. Sec. 4187; re-en. Sec. 4788, R.C.M. 1935; R.C.M. 1947, 16-2716; amd. Sec. 11, Ch. 548, L. 1987.

Who pays for the costs incurred in serving process?

25-3-203. Prepayment of cost of service. In no case shall the officer or registered process server receiving papers for service be required to serve the same unless the person in whose behalf the service is made or his agent or attorney first pay the cost of the service upon a demand therefor by the officer or registered process server.

Who serves process when the sheriff is a party to an action?

25-3-205. Execution of process when sheriff a party. When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server.

How is the Court informed that process has been served?

25-3-301. Time and manner of return. (1) It shall be the duty of the sheriff or other person serving a summons or other process or order required by any of the provisions of this code, issued out of any of the district courts of this state, to make due and legal return of such service and file the same with the clerk of the court in which such action or proceeding is pending not more than 10 days after the making of such service where the same was made in the county in which such action or proceeding is pending and not more than 15 days after the making of such service when the same was made outside of the county in which such action or proceeding is pending. Any failure to make and file such return as required may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under [25-3-201](#), the sheriff or a registered process server may enclose his return of such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, prepaying postage. History: (1)En. Sec. 1, Ch. 38, L. 1907; re-en. Sec. 6527, Rev. C. 1907; re-en. Sec. 9124, R.C.M. 1921; re-en. Sec. 9124, R.C.M. 1935; Sec. 93-3020, R.C.M. 1947; (2)En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R.C.M. 1921; Cal. Pol. C. Sec. 4177; re-en. Sec. 4778, R.C.M. 1935; Sec. 16-2706, R.C.M. 1947; R.C.M. 1947, 16-2706, 93-3020; amd. Sec. 84, Ch. 575, L. 1981; amd. Sec. 15, Ch. 548, L. 1987.

Section 25-3-301 requires a registered process server to make a return not more than 10 days after the date of service, if service is made within the county, and not more than 15 days if service is made outside the county in which such action or proceeding is pending. Failure to make a return is punishable as a contempt of court.

25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the facts in such return stated. History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R.C.M. 1921; Cal. Pol. C. Sec. 4178; re-en. Sec. 4779, R.C.M. 1935; R.C.M. 1947, 16-2707; amd. Sec. 16, Ch. 548, L. 1987.

25-3-204. Officer to exhibit process. The officer or registered process server executing such process must, then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein. History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R.C.M. 1921; Cal. Pol. C. Sec. 4188; re-en. Sec. 4789, R.C.M. 1935; R.C.M. 1947, 16-2717; amd. Sec. 13, Ch. 548, L. 1987.

The Levying Officer

The job of levying officer is substantially more complex than that of the process server and has a great deal of liability exposure. See 70 American Jurisprudence 2d, Sheriffs, Police and Constables, §§ 61-180

The statutes governing writs of execution and levying are contained in Mont. Code Ann. Title 25, chapter 13.

What is Levy?

A levy is the obtaining of control of property to satisfy a writ of execution.

What is a Writ of Execution?

25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount of money and the amount actually due on the judgment; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount of the execution must be computed and stated as near as may be possible in dollars and cents, rejecting fractions of a cent.

(3) A writ of execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in [25-13-614](#). History: (1)En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; Sec. 93-5802, R.C.M. 1947; (2)En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; Sec. 93-4710, R.C.M. 1947; R.C.M. 1947, 93-4710(part), 93-5802(part); amd. Sec. 105, Ch. 575, L. 1981; amd. Sec. 18, Ch. 548, L. 1987; amd. Sec. 4, Ch. 89, L. 1999.

Against whom may a Writ of Execution be executed?

25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff or levying officer to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors or, if sufficient thereof cannot be found within his county to satisfy the same, to levy and make the same out of the property, personal or real, of the judgment debtor who was surety. History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 19, Ch. 548, L. 1987.

25-13-303. Execution when only some of defendants served. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to

satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action. History: En. Sec. 185, p. 80, Bannack Stat.; amd. Sec. 211, p. 177, L. 1867; re-en. Sec. 252, p. 81, Cod. Stat. 1871; re-en. Sec. 303, p. 119, L. 1877; re-en. Sec. 303, 1st Div. Rev. Stat. 1879; re-en. Sec. 314, 1st Div. Comp. Stat. 1887; re-en. Sec. 1212, C. Civ. Proc. 1895; re-en. Sec. 6815, Rev. C. 1907; re-en. Sec. 9418, R.C.M. 1921; re-en. Sec. 9418, R.C.M. 1935; R.C.M. 1947, 93-5803; amd. Sec. 20, Ch. 548, L. 1987.

25-13-304. Execution against property of judgment debtor. If the writ be against the property of the judgment debtor, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property as provided in [25-13-305](#). History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 106, Ch. 575, L. 1981; amd. Sec. 21, Ch. 548, L. 1987.

25-13-305. Execution of lien on real property. If the judgment be a lien upon real property, the writ shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter. History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 22, Ch. 548, L. 1987.

25-13-306. Execution against property in hands of representative. If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of such property. History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(2); amd. Sec. 23, Ch. 548, L. 1987.

25-13-307. Execution requiring delivery of possession of property. If the writ be for the delivery of the possession of real or personal property, it must require

the sheriff or levying officer to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or levying officer to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in [25-13-305](#). History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(4); amd. Sec. 24, Ch. 548, L. 1987.

25-13-203. Judgments requiring the performance of specific acts. (1) When the judgment requires the performance of any other act than those designated in [25-13-201](#) and [25-13-202](#), a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court. History: (1)En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; Sec. 93-5805, R.C.M. 1947; (2)En. Sec. 229, P. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; Sec. 93-4504, R.C.M. 1947; R.C.M. 1947, 93-4504(part), 93-5805(part); amd. Sec. 17, Ch. 548, L. 1987.

To whom is a Writ of Execution issued?

25-13-401. To whom execution issued. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or levying officer of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or levying officer of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties. History: En. Sec. 216, p. 178, L. 1867; re-en. Sec. 257, p. 82, Cod. Stat. 1871; re-en. Sec. 307, p. 120, L. 1877; re-en. Sec. 307, 1st Div. Rev. Stat. 1879; re-en. Sec. 318, 1st Div. Comp. Stat. 1887; re-en. Sec. 1217, C.

Civ. Proc. 1895; re-en. Sec. 6820, Rev. C. 1907; re-en. Sec. 9423, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 687; re-en. Sec. 9423, R.C.M. 1935; R.C.M. 1947, 93-5809; amd. Sec. 25, Ch. 548, L. 1987.

How is a Writ of Execution executed?

25-13-402. How writ executed. (1) The sheriff or levying officer shall execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by:

(a) levying on a sufficient amount of property, if there is sufficient property;

(b) collecting or selling the things in action; and

(c) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 60 days until the judgment is satisfied or the writ expires. History: En. Sec. 198, p. 83, Bannack Stat.; re-en. Sec. 220, p. 180, L. 1867; re-en. Sec. 270, p. 85, Cod. Stat. 1871; amd. Sec. 320, p. 125, L. 1877; re-en. Sec. 320, 1st Div. Rev. Stat. 1879; re-en. Sec. 331, 1st Div. Comp. Stat. 1887; re-en. Sec. 1224, C. Civ. Proc. 1895; re-en. Sec. 6827, Rev. C. 1907; re-en. Sec. 9431, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 691; re-en. Sec. 9431, R.C.M. 1935; R.C.M. 1947, 93-5823; amd. Sec. 3, Ch. 88, L. 1987; amd. Sec. 26, Ch. 548, L. 1987; amd. Sec. 5, Ch. 89, L. 1999.

Who pays for the costs incurred in an execution?

25-13-403. Security for costs when property seized. If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ. History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part); amd. Sec. 27, Ch. 548, L. 1987.

How is the court informed an execution has occurred?

25-13-404. Return of the execution. (1) Except as provided in subsections (2) and (3), execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 60 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in [25-13-402](#).

(2) The writ of execution issued by the county treasurer under [15-16-401](#) may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff or levying officer, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose his return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage. History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part); amd. Sec. 107, Ch. 575, L. 1981; amd. Sec. 1, Ch. 91, L. 1983; amd. Sec. 4, Ch. 88, L. 1987; amd. Sec. 28, Ch. 548, L. 1987.

What property is subject to execution?

25-13-501. What property subject to execution. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without

exposing the same to sale. Until a levy, property is not affected by the execution. History: En. Sec. 192, p. 81, Bannack Stat.; amd. Sec. 217, p. 178, L. 1867; re-en. Sec. 258, p. 82, Cod. Stat. 1871; re-en. Sec. 308, p. 121, L. 1877; re-en. Sec. 308, 1st Div. Rev. Stat. 1879; re-en. Sec. 319, 1st Div. Comp. Stat. 1887; re-en. Sec. 1218, C. Civ. Proc. 1895; re-en. Sec. 6821, Rev. C. 1907; re-en. Sec. 9424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 688; re-en. Sec. 9424, R.C.M. 1935; R.C.M. 1947, 93-5810.

What occurs if personal property levied upon is claimed by a third party?

25-13-503. Property claimed by third persons. If personal property levied upon be claimed by a third person, the same proceedings shall be had as provided in attachment in [27-18-602](#). History: En. Sec. 1220, C. Civ. Proc. 1895; re-en. Sec. 6823, Rev. C. 1907; re-en. Sec. 9426, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 689; re-en. Sec. 9426, R.C.M. 1935; R.C.M. 1947, 93-5812.

27-18-602. Claim of attached property by third person -- plaintiff to indemnify sheriff. If personal property attached be claimed by a third person, he shall give notice thereof to the sheriff and deliver to him an affidavit, stating his claim, ownership, and a description of the property; and unless the plaintiff, within 10 days after receiving notice thereof, give the sheriff a good and sufficient bond to indemnify him against loss or damage by reason of such retaining said property, the sheriff shall deliver the same to such person. History: En. Sec. 149, p. 57, Cod. Stat. 1871; re-en. Sec. 191, p. 87, L. 1877; re-en. Sec. 191, 1st Div. Rev. Stat. 1879; re-en. Sec. 193, 1st Div. Comp. Stat. 1887; en. Sec. 906, C. Civ. Proc. 1895; re-en. Sec. 6673, Rev. C. 1907; re-en. Sec. 9273, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 549; re-en. Sec. 9273, R.C.M. 1935; R.C.M. 1947, 93-4320.

What occurs if personal property levied upon is subject to a security interest?

25-13-505. Personal property subject to a security interest. Personal property subject to a security interest may be taken on execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party. History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

What property is exempt from execution?

25-13-608. Property exempt without limitation -- exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support; and

(h) a burial plot for the judgment debtor and the debtor's family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child. History: En. Sec. 3, Ch. 302, L. 1987; amd. Sec. 1, Ch. 240, L. 1989; amd. Sec. 21, Ch. 552, L. 1997; amd. Sec. 1, Ch. 262, L. 1999.

25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed \$2,500 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed \$4,000 in value, in any unmaturing life insurance contracts owned by the judgment debtor. History: En. Sec. 4, Ch. 302, L. 1987; amd. Sec. 1, Ch. 130, L. 1989; amd. Sec. 1, Ch. 237, L. 1999.

25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in [25-13-609](#)(1), there shall be exempt to all judgment debtors the following property:

(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions. History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 3, Ch. 210, L. 1985; amd. Sec. 37, Ch. 83, L. 1989.

25-13-614. Earnings of judgment debtor. (1) Earnings of a judgment debtor that are not subject to garnishment as provided in this section are exempt.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i). (b) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in subsection (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672. History: En. Sec. 1222, C. Civ. Proc. 1895; re-en. Sec. 6825, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1913; re-en. Sec. 9429, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1933; re-en. Sec. 9429, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1939; R.C.M. 1947, 93-5816; amd. Sec. 7, Ch. 370, L. 1981; amd. Sec. 1, Ch. 153, L. 1983; amd. Sec. 1, Ch. 538, L. 1985; amd. Sec. 7, Ch. 302, L. 1987; amd. Sec. 2, Ch. 301, L. 1989.

25-13-615. Homestead. The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32. History: En. Sec. 1223, C. Civ. Proc. 1895; re-en. Sec. 6826, Rev. C. 1907; re-en. Sec. 9430, R.C.M. 1921; re-en. Sec. 9430, R.C.M. 1935; R.C.M. 1947, 93-5818.

Is property traceable to exempt property exempt?

25-13-610. Tracing exempt personal property. (1) If money or other property exempt under [25-13-608](#) and [25-13-609](#) has been sold or has been lost,

damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under [25-13-614](#) remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor. History: En. Sec. 5, Ch. 302, L. 1987.

How is property sold after it has been levied upon?

The statutes on this issue are unclear. Mont. Code Ann. title 25, chapter 13, part 7, which deals with the Sale of Execution, was not amended in 1987. Part 7 provides the method of conducting a Sheriff's Sale and penalties for failure to follow that method. It appears the legislature has failed to provide a method to sell levied property.

- (1) It is suggested that each registered process server contact private legal counsel for advice on the proper method for selling levied property.
- (2) Two suggested methods for selling levied property are:
 - (a) the court order authorizing the execution of judgement should also contain specific instructions concerning the sale of the levied property and disposition of proceeds; or
 - (b) the court order authorizing the execution of judgment should also contain an order directing the sheriff to conduct a sheriff's sale for the property levied pursuant to the writ of execution.

MONTANA BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS**301 South Park, Room 430****P. O. Box 200513****Helena, Montana 59620-0513****(406) 841-2387 FAX (406) 841-2309****EMAIL: dlibsdp@mt.gov****WEB SITE: <http://www.privatesecurity.mt.gov>****Application to take Exam for :** ☐ **Process Server**1. FULL NAME _____
Last First Middle

2. OTHER NAME(S) KNOWN BY _____

3. BUSINESS NAME (if have one): _____

4. BUSINESS ADDRESS _____
Street or PO Box # City and State Zip Country5. HOME ADDRESS _____
Street or PO Box # City and State Zip Country6. TELEPHONE: () () ()
Business Home Fax

7. SOCIAL SECURITY NUMBER _____ FOREIGN ID NUMBER _____

8. DATE OF BIRTH _____ PLACE OF BIRTH _____
City/State ☐ MALE ☐ FEMALE9. ADDRESS OF LOCAL JOB SERVICE TO TAKE EXAM, IF APPLICABLE.

_____10. Have you ever been convicted of a felony? ☐ Yes ☐ No11. Have you been a resident of the State of Montana for one year? ☐ Yes ☐ No**ATTENTION: PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BEFORE SIGNING THIS FORM.**

I hereby declare under penalty of perjury the information included in my application to be true and complete to the best of my knowledge. In signing this application, I am aware that a false statement to any question may lead to denial of my application for certification as a registered process server.

Legal Signature of Applicant_____
Dated

Subscribed and sworn to by me this _____ day of _____, _____ at _____

City/State_____
Notary Public

SEAL

For the State of

My commission expires _____, _____